IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 13 OF 2007

Shri Bento D'Souza,
Resident of Carmita, wadi,
Merces, Tiswadi, Goa. ... Applicant

versus

1. Smt. Rosana Pereira,
   Major in age, resident
   of House No.
   Carmichem Bhat,
   Merces, Tiswadi, Goa.

2. State of Goa,
   through the Public Prosecutor,
   Panaji, Goa. ... Respondents

Mr. Aldrin Monteiro, Advocate for the Applicant.

Mr. S. G. Bhobe, Advocate for the Respondent No.1.

CORAM : N. A. BRITTO, J.

DATE : 29TH MARCH, 2007.

ORAL ORDER

Heard Mr. Aldrin Monteiro, the learned Counsel on behalf of the applicant/accused and Mr. S. G. Bhobe, the learned Counsel on behalf of the respondent no.1/complainant.

2. This revision has been filed by the applicant/accused against Judgment/Order dated 30-11-2006 of the learned Additional Sessions Judge, Panaji, upholding the conviction against the applicant/accused by Judgment dated 3-2-2006 of the learned J.M.F.C., Panaji convicting and sentencing the said accused under Section 138 of the Negotiable Instruments Act, 1881. The accused has been sentenced for dishonour of a cheque of Rs.1,00,000/- to undergo S.I. till rising of the Court and to pay compensation to the complainant in the sum of Rs.75,000/-. There is no dispute that during the trial, the accused paid to the complainant a sum of Rs.83,000/-.

3. There is also no dispute that the complainant as one of the co-owners had sold to the accused a property vide Sale Deed dated 10-5-2000 for a sum of Rs.2,12,790/- and one of the recitals of the said Sale Deed stated that in consideration of payment of the said sum of Rs.2,12,790/- which payment the vendors admitted and acknowledged, as having received, the vendors conveyed by way of sale to the purchasers i.e. the accused and his wife their right, title, interest etc. in the said property. At the same time, it was the case of the complainant that the subject cheque bearing No. 500944 dated 25-6-2000 for a sum of Rs.1,00,000/- was issued by the accused towards consideration of the purchase price.

4. The complainant in the course of examination admitted that the subject cheque was issued prior to the execution of the Sale Deed, outside the

Office of the Sub Registrar and before the signing of the said Sale Deed. The learned Counsel on behalf of the petitioner submits that the Sale Deed was executed on 10-5-2000 while the subject cheque was dated 25-6-2000 and therefore it was necessary for the complainant to have proved that there was a subsisting legally enforceable debt as on the date the cheque was issued. As regards this aspect, the complainant stated that she had filled in only her name and the rest of the contents of the cheque were written by the accused. The accused chose not to reply to the statutory notice sent by the complainant to the accused. Likewise, the accused also chose not to step in the witness box to support his case that the amount of the cheque was indeed paid to the complainant at the time of the execution of the sale Deed on 10-5-2000. The very fact that the accused paid in the course of the trial a sum of Rs.83,000/- is a strong factor which proves that the subject cheque was issued to the complainant towards the sale price due on the said Sale Deed dated 10-5-2000 notwithstanding the fact that it was recorded by way of recital, and presumably because the cheque was issued by the accused, that the sale price was received by the complainant and others. Both the Courts below have considered these aspects of the case and have come to the conclusion that the subject cheque was issued by the accused towards the liability of the accused which the accused had towards the complainant by way of part payment of sale price of the Sale Deed executed on 10-5-2000.

5. In my view, there is no merit in this revision and consequently the same is hereby dismissed.

N. A. BRITTO, J.

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